

The Administrative Law Judge (ALJ) awarded claimant a 9 percent permanent partial general disability as a result of bilateral upper extremity injuries she suffered while employed by the respondent. Claimant appeals and contends that she proved through the more persuasive and credible opinion of Dr. Edward J. Prostic that her work-related bilateral upper extremity injuries resulted in her suffering a 17 percent whole body functional impairment instead of the 9 percent found by the ALJ. Accordingly, claimant requests the Board to increase claimant's permanent partial general disability award from 9 percent to 17 percent.

Respondent, however, contends the ALJ clearly and properly considered all of the evidence contained in the record and the Board should affirm the award.

The sole issue before the Board to review is nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Board makes the following findings and conclusions:

Three physicians testified and expressed their opinion on the nature and extent of claimant's disability. Bradley W. Storm, M.D., a board certified plastic surgeon with a certification of added qualification in hand surgery, was claimant's treating physician. Dr. Storm first saw claimant on June 17, 1999, with bilateral hand symptoms, right more than the left. Dr. Storm performed a physical examination of claimant that revealed a positive median nerve compression test and a positive Tinel's sign bilaterally, right more than left. Dr. Storm also reviewed an EMG and a nerve conduction study that had been performed on March 19, 1998, that found carpal tunnel syndrome only at the right side. The doctor, after conducting a physical examination of claimant and reviewing the EMG and nerve conduction study, diagnosed claimant with bilateral carpal tunnel syndrome, but much more significant on the right. On June 22, 1999, claimant underwent a right open carpal tunnel release performed by Dr. Storm. The doctor released claimant to return to work with no restrictions on September 27, 1999. At that time, however, Dr. Storm found claimant with worsening left upper extremity symptoms, now to the same extent as the right symptoms were before surgery. Dr. Storm recommended treatment options for the left upper extremity which included surgery.

Dr. Storm testified by deposition on January 11, 2001. He last saw claimant on November 11, 1999, and based on loss of grip strength from testing results completed by an occupational therapist and the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition (AMA Guides), Dr. Storm assessed claimant with a 5 percent functional impairment at the level of the wrist. He did not rate claimant's left upper extremity because claimant had elected not to follow through with surgery or conservative treatment recommendations. But Dr. Storm admitted that claimant had continuing left upper extremity complaints that had worsened at the time he saw her on September 27, 1999, and she had consistent physical findings, although not as a result of the EMG testing, of left carpal tunnel syndrome.

The next physician that examined and evaluated claimant was orthopedic surgeon Dr. Edward J. Prostic. Dr. Prostic saw claimant once on May 14, 2000, at claimant's attorney's request. He found claimant with complaints in both hands. On the physical examination, Dr. Prostic on the right found only 17 kilograms of grip strength, a negative Tinel's test, and a rapidly positive flexion compression median nerve test. On the left, the doctor found 35 kilograms of grip strength, negative Tinel's test, and a rapidly positive

flexion compression median nerve test. He diagnosed bilateral carpal tunnel syndrome with fairly severe loss of grip strength on the right. In accordance with the AMA Guides, he assessed claimant with a 20 percent functional impairment for the right upper extremity and a 10 percent functional impairment of the left upper extremity for a combined whole body functional impairment of 17 percent. The right wrist was rated for loss of grip strength according to the grip strength tables contained in the AMA Guides.¹ The left was rated according to the peripheral nerve entrapment neuropathy table using the mild entrapment category of 10 percent.² Based on claimant's history of complaints and the positive physical finding of the flexion compression median nerve test, Dr. Prostic, although the EMG test was negative, opined that claimant suffered a permanent carpal tunnel syndrome injury of the left upper extremity as a result of her work activities she performed for the respondent. Dr. Prostic further testified that he had a responsibility when he was employed by the claimant to find the highest possible impairment rating consistent with the AMA Guides. Dr. Prostic went on to testify that when he was employed by the defense he had the responsibility to find the lowest possible rating consistent with the AMA Guides.

The third physician to examine and evaluate claimant was orthopedic surgeon Theodore L. Sandow, Jr., M.D. of Kansas City, Missouri. Dr. Sandow, pursuant to the ALJ's request, performed an independent medical evaluation of claimant on September 6, 2000. Claimant had complaints of pain, numbness, and tingling in both her right and left hands. She also had complaints of loss of grip strength in the right hand. On physical examination, Dr. Sandow found claimant with a negative right Tinel sign and positive left Tinel sign along with a positive Phalen's test bilaterally. In accordance with the AMA Guides, page 57, Table 16, Upper Extremity Impairment Due to Entrapment Neuropathy, Dr. Sandow placed claimant in the mild category for claimant's right upper extremity injury representing a 10 percent functional impairment, but discounted the 10 percent to 6 percent because he did not find any loss of mobility or significant strength differences. Although Dr. Sandow recognized that claimant had positive physical findings for left carpal tunnel syndrome, he would not validate a diagnosis of left carpal tunnel syndrome because of the negative EMG testing results.

On cross examination, however, Dr. Sandow did agree, based on claimant's history, that claimant did have a permanent condition in her left wrist. He diagnosed claimant with chronic tenosynovitis of the left upper extremity. Based on that diagnosis, Dr. Sandow, utilizing Table 16 on page 57 of the AMA Guides, and adding the comment "might modify it to some degree" testified he would assign a 10 percent functional impairment for claimant's left upper extremity condition under the mild degree of severity category. But on redirect Dr. Sandow was asked, even after the questioning by claimant's counsel, does your independent medical examination report still reflect your opinion. Dr. Sandow answered,

¹ See AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition (AMA Guides) , pp. 64-65.

² See AMA Guides, p.57, Table 16.

“Yes”, it does.” Dr. Sandow’s September 6, 2000, independent medical report only assigned claimant a 6 percent functional impairment to claimant’s right upper extremity and was silent as to the left upper extremity.

The ALJ concluded that the collective testimony of all three physicians proved that claimant suffered permanent injury to both her upper extremities while working for the respondent. In fact, in this appeal respondent has not disputed the claimant injured both upper extremities and therefore, is entitled to a whole body functional impairment. Here, the dispute is over the appropriate permanent functional impairment that has resulted from those upper extremity permanent injuries. All three physicians who testified expressed an opinion pursuant to the AMA Guides as to the appropriate functional impairment for claimant’s right upper extremity injury. All three physicians used different physical findings and then expressed opinions of functional impairment that ranged from 5 percent to 20 percent. Dr. Prostic and Dr. Sandow were the only physicians to express a functional impairment opinion concerning claimant’s left upper extremity injury. Both of those opinions were 10 percent. But Dr. Prostic’s opinion was formulated based on a diagnosis of carpal tunnel syndrome while Dr. Sandow’s opinion was based on a diagnosis of chronic tenosynovitis.

The ALJ found and the Board agrees, based on Dr. Prostic’s revealing testimony, that his functional impairment opinion is probably somewhat generous. The Board, therefore, after considering all three of the physicians’ opinions, concludes that the ALJ’s compromise finding of 6 percent functional impairment for each upper extremity is reasonable, based on the record as a whole, and, therefore, affirms that conclusion.

But the Board finds it is necessary to make a small adjustment in the ALJ’s whole body 9 percent functional impairment finding. The 9 percent functional impairment finding has to be adjusted to an 8 percent rating because the 6 percent upper extremity findings are required under the AMA Guides to be first converted to a whole person rating before the ratings are combined using the Combined Value Chart.³ A 6 percent upper extremity rating converts to a 4 percent whole person rating⁴ and two 4 percent whole person ratings combine for an 8 percent whole body functional impairment.⁵

The Board also finds the ALJ’s award sets out findings of fact and conclusions of law that are detailed and supported by the record. The Board adopts those findings and conclusions, that are not inconsistent with this order, as its own as if specifically set forth herein.

³ See AMA Guides, p. 66, XI.

⁴ See AMA Guides, p. 20, Table 3.

⁵ See AMA Guides, pp. 322-324.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Jon L. Frobish's February 12, 2001, Award should be modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Tina M. Lacrone and against the respondent, Hi Lo Table Mfg., Inc., and its insurance carrier, Fireman's Fund Insurance Company, for an accidental injury which occurred on June 9, 2000, and based upon an average weekly wage of \$280.37.

Claimant is entitled to 2 weeks of temporary total disability compensation at the rate of \$186.92 per week or \$373.84, followed by 33.20 weeks of permanent partial disability compensation at the rate of \$186.92 per week or \$6,205.74 for an 8 percent permanent partial general disability, making a total award of \$6,579.58, which is all due and owing and is ordered paid in one lump sum less any amounts previously paid.

All other orders contained in the Award are adopted by the Board.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Joseph G. McMillan, Attorney for Respondent
Jon L Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director